IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISC. APPLICATION NO. 112 OF 2006.

Clement Tochi Nnebedum
Presently lodged in
Judicial Custody,
Judicial Lock-Up.
Mapuca, Bardez-Goa. ..... Applicant

V e r s u s

State of Goa,
As represented by
Officer-In-Charge,
Anti Narcotic Cell Police Station,
Panaji, Goa. ..... Respondent

Ms. Collasso, Advocate for the Applicant.

Ms. W. Coutinho, Public Prosecutor for the State/Respondent.

CORAM: N. A. BRITO, J.

DATE: 16th February, 2006.

P.C.

Heard Ms. Collasso, the learned Counsel on behalf of the applicant and Ms. Coutinho, the learned P.P. on behalf of the respondent.

2. The applicant herein A2, along with A1/Amam Chukwu Umeh,

are being prosecuted in Special Criminal Case No. 24/05 under Section 21 (C) of the NDPS Act 1985, with the allegation that on 24.09.2005, they were found in possession of 600 grams of cocaine valued at Rs.30,00,000.

3. The applicant/A2, approached the learned Special Judge, by his application dated 17.12.2005 for bail, but the same came to be rejected by Order dated 02.01.2006 and, therefore, the applicant/A2 is now before this Court seeking bail.

4. The facts stated on behalf of the prosecution are that on 24.09.2005, specific and reliable information was received and, pursuant to that, a raid was conducted between 14.50 hours to 17.00 hours, near Prime Rose Bar and Restaurant, Vagator, when it was found that both the accused being Nigerian Nationals, were travelling in a taxi. The applicant/A2 was sitting on the front seat and A1/Amam Chukwu Umeh, was sitting at the back seat and after the said taxi was intercepted, A1/ Amam Chukwu Umeh, was found in possession of 560 grams of cocaine and cash of Rs.2,20,000/- and A1/Amam Chukwu Umeh, also made an attempt to run away and later between 17.35 hours and 19.35 hours, a search was conducted in Flat No.3, on the First Floor of Royal Residency, Candolim,

which was occupied by both the accused and, at that time, at the instance of applicant/A2, 40 grams of cocaine was found.

5. The learned Special Judge, has rejected the application for bail filed by the applicant/A2 on two counts. It appears that the applicant/A2, at present has no travel documents, not even a passport. It also appears that on 03.09.2005, in CC no. 573/S/05/F, the applicant/A2, was convicted under Section 14 of Foreigners Act 1946, to undergo SI till the rising of the Court and pay a fine of Rs.3,000/-, in default, to undergo S.I. for one month. It appears that after having undergone the said imprisonment and after having paid the said fine, the accused did nothing towards obtaining any passport or any other travel document and the State too has done nothing towards deporting him. Granting bail to the applicant/A2, at this stage, without the applicant/A2 having any travel documents, would be only granting him license to breach again the provisions of the Foreigners Act 1946 and/or the other provisions of law dealing with foreigners. It has been submitted by Ms. Collasso, that the applicant/A2 could be admitted to bail subject to the applicant/A2 obtaining the passport and other relevant travel documents. I am not inclined to accept the said submission. In my view, liberty could be given to the applicant/A2 to apply afresh for bail on

this ground as and when the applicant/A2 is able to secure the necessary passport and other travel documents.

6. The learned Special Judge has come to the conclusion that there was nexus between both the accused so as to draw an inference that, both had conscious knowledge of 560 grams of cocaine found with A1, apart from the 40 grams of cocaine recovered at the instance of and/or in possession of applicant/A2. Ms. Collasso, the learned Counsel on behalf of the applicant submits that what was indeed found, if at all, was 40 grams of cocaine with the applicant/A2 and, therefore, he could not be deprived of bail by connecting him to 560 grams, which were found with A1/Amam Chukwu Umeh. Ms. Collasso, has submitted that 40 grams is a variable quantity and being less than commercial quantity, the applicant would be entitled to bail. Learned Advocate Ms. Collasso has submitted that the prior information received and recorded, is hearsay evidence and, therefore, the same could not be relied upon to deny bail to the applicant/A2 and to support the said submission, learned Advocate Ms. Collasso, has placed reliance on the case of ***B. Gangaram & Ors. Vs. The State of Gujarat (1983 Cri. L. J. 1276)*** and on ***Sarkar's Law of Evidence, Page 623***.

7. In the case of **B. Gangaram** (Supra) A3 and A5 were convicted under Section 66(1)(b) of the Bombay Prohibition Act 1949, and the prosecution had relied on the evidence of P.w.12, to show that he had received information in the evening of 12.09.1970 that from Baroda, the truck No. GTD 4098 would carry liquor to Ahmedabad and that A3 and A4 and some other persons would be coming in a taxi behind the truck but since the informant had not been examined as a witness, the evidence of P.w.12 that he was informed that accused no.3 and 4 would be coming behind the truck in the taxi, was not admissible. On page 623 of Sarkar's Law of Evidence, it is stated that, hearsay properly speaking is secondary evidence of any oral statement i.e. when witness A says that B told him about the happening of events X (though B is not before the Court). A's assertion about event X being not based on his own observation, he is not qualified to speak to it and B's assertion made out of Court cannot be accepted because it cannot be subject to cross examination and other tests, but if the object is only to prove B's assertion of the event (and not to prove the event). A is competent to speak to it and it may be received if it has any relevancy in the case.

8. Admittedly, the raid was conducted pursuant to the

information received and recorded and which showed that two Nigerian nationals would be coming near Prime Rose Bar and Restaurant, Vagator, to deliver cocaine to customers between 14.30 hours to 15.30 hours on 24.09.2005. One does not know whether the prosecution would be examining the informant who gave the said information. But even if, the said information is kept aside, here we have a case of two foreigners, both Nigerian nationals, who, prima facie, can be said to have been living together and moving together. It is difficult to accept in such situation that one did not know what the other was doing. On one's personal search, namely of A1/Amam Chukwu Umeh, 560 grams of cocaine was found and substantial cash of Rs.2,20,000/- and from the possession of applicant/A2, 40 grams of cocaine was found. On these very facts stated, it could be certainly inferred at this stage, that their possession of the said drugs was conscious and, in the light of that, both of them having been found with commercial quantity, the Court is required to look at their applications for bail negatively. It is rather unfortunate that the applicant/A2, being a foreigner, inspite of having been convicted under the Foreigners Act 1946, instead of obtaining the required documents or going away to his country, chose to indulge in sale of drugs.

In the light of the above, the application for bail is hereby rejected.

N. A. BRITTO, J.

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